

## **JUSTICE COURT CIVIL ACTION INSTRUCTIONS**

This Court will furnish you the proper forms upon request, but the Judge or Clerk are **not allowed by law to give legal advice**. If you need legal advice consult an attorney. You may also consult *Montana Code Annotated*, Montana Justice Court Rules of Civil Procedure, Title 25, Chapter 23. MCA Title 25 can be found at the Madison County Law Library in the courthouse or on-line through [www.mt.gov](http://www.mt.gov). Make copies of the forms as needed.

### **COMPLAINT**

The party filing is the Plaintiff and the other party is the Defendant. Fill in the amount you are requesting (maximum amount allowed \$7,000.00) and a statement of cause of the action, dates of contract or injury etc. You will need the correct name of the person or persons you are suing and the correct physical address (post office box numbers are not sufficient). The fee to file a complaint is \$35.00

### **SUMMONS**

The Court will file the Complaint and issue the Summons. Plaintiff is required to have the original summons and a copy of the complaint and summons served on each defendant named.

-If Defendant lives in this County, the Sheriff's Office will serve Defendant. Justice Court will deliver the papers to the Sheriff if requested in writing. The Sheriff's office may request fees in advance for each original document. For further service information contact the Madison County Sheriff's Office at (406) 843-5301.

-If Defendant lives out of County it is your responsibility to contact the Sheriff's Department in that County or to locate a private process server.

### **PRAECIPE AND SHERIFF'S RETURN**

The Praecipe is your instructions for service to the process server or Sheriff. Do not file this form with the Court. Include your mailing address and phone number.

Once the Defendant has been served the Sheriff's office will return the original Summons to you with a Sheriff's Return. The Return shows if Defendant was served and the date of service. IT IS PLAINTIFF'S RESPONSIBILITY TO BE SURE THE ORIGINAL SUMMONS WITH THE RETURN ATTACHED IS RETURNED TO THE COURT.

### **ANSWER and MEDIATION**

Defendant has twenty (20) days (ten days for an Action for Possession), excluding the date of service, to file an Answer denying all allegations in the complaint. The answer must include a \$20.00 answer fee or the answer will not be filed. If Defendant files a proper answer, the court will set a date for mediation.

If the case does not settle at mediation a pre-trial conference will be held. Parties will exchange all witness names and evidence they plan to bring up at trial and a trial date will be set. All parties are required to bring them to mediation, all evidence and witness names which will be entered to prove their case. Copies of all evidence must be provided to each other.

## **TRIAL**

To prepare for your case, it is beneficial to have all the facts written down. Answering the following questions may help:

- 1. What date was the contract oral or written entered into or when did Defendant cause the damage?*
- 2. Is there a written contract or agreement?*
- 3. What are the terms of the agreement either oral or written?*
- 4. When did Defendant breach the contract?*
- 5. List in order the dates you sent written requests to try to collect.*

At trial, the Judge will place all parties testifying under oath. Facts should be presented in the proper order in which they happened. First the Plaintiff presents evidence and calls Witnesses. Then Defendant presents evidence and calls witnesses. Each party may cross examine the other party and the witnesses. After testimony, each side may make closing statements. The Judge will enter Findings of Facts, Conclusions of Law and Judgment. These will be mailed to both parties.

## **JUDGMENTS and JUDGMENTS BY DEFAULT**

After trial the prevailing party will be required to pay a \$10.00 Judgment fee.

If the Defendant does not file a proper written answer within 20 days, Plaintiff is entitled to a Default Judgment. It is the Plaintiff's responsibility to file a written motion for a Default Judgment and attach an Affidavit of Amount Due. A judgment fee is not required for a Default Judgment.

The parties may agree to a payment plan on a Judgment. If this is done, the Court does not need to be involved. The agreement should be in writing.

All Judgments can be executed on for ten (10) years.

## **WRIT OF EXECUTION**

If a party does not offer to pay on a Judgment or does not complete paying, a Writ of Execution may be requested (ask the Court for this form, a Praecipe for the Sheriff and a Notice of Execution Levy).

A Writ of Execution is an order to the Sheriff directing him to take money from a bank account or wages party to pay the Judgment. Fill out the Writ of Execution, stating what personal property you want to attach. For example, you can attach bank accounts and garnish wages.

When a Writ is requested, IT IS THE RESPONSIBILITY OF THE REQUESTING PARTY TO OBTAIN INFORMATION about the employer, bank accounts etc. You then take the Praecipe, the original Writ, a copy of the Writ and Notice of Execution to the Sheriff for service. The Sheriff may request a fee for service. The Sheriff will serve the Writ and collect the amount allowed by law and return the Original Writ to you with a Sheriff's Return.

It may take several Writs to satisfy a judgment. The Court will not issue a new writ until the original is returned. Each time a new Writ is requested, add accrued interest, fees and payments received. (Make copies of the original writ form for this purpose).

**When a Judgment has been satisfied, fully notify the Court in writing of the satisfaction.**